

Domestic Relations Committee
Judicial Conference of Indiana

Minutes
May 16, 2003

The Domestic Relations Committee met at the Indiana Judicial Center in Indianapolis, Indiana on Friday, May 16, 2003, from 10:30 a.m.- 3:30 p.m.

1. Members present. Cynthia J. Ayers; Scott R. Bowers; Thomas J. Felts; Diana LaViolette; Keith A. Meier; Robyn L. Moberly; Michael P. Scopelitis; Kathy R. Smith; Richard G. Striegel and Daniel F. Donahue, Chair.
2. Staff present. Jeffrey Bercovitz provided the committee with staff assistance.
3. Minutes approved. The minutes for the committee on March 21, 2003 were approved.
4. Guests present. Dr. David Betson, University of Notre Dame; Robert Monday and Andrew Cosby, PACE; and Paul Leonard, Chair, Family Law Section, ISBA and Jane Seigel, Executive Director, Indiana Judicial Center were also present.
5. Recent legislation.
 - a. Jeffrey Bercovitz distributed a copy of HB 1034 as signed by the governor to the committee, concerning alternative dispute resolution in family law cases. Committee members asked the Judicial Center to confirm that senior judges serving under this statute receive credit towards the thirty (30) days since they are not paid with state monies.
 - b. Jane Seigel asked the committee to prepare guidelines for implementation of this new statute. Committee members prepared a proposal to the Board of Directors of the Judicial Conference of Indiana for their review. It contained recommendations on items to be included in a plan and requirements for reporting on December 31 each year when the ADR program is in effect in a county. See Attachment No. 1. In addition, the committee recommended the attached committee proposal be placed on the committee's website for comment.
 - c. Judge Felts gave an update on how the program is working in Allen County and agreed to prepare a sample plan to be used by various courts when they give their plans to the Judicial Conference of Indiana as required under the new law.
6. Child Support Guidelines.
 - a. Jeffrey Bercovitz displayed and distributed a draft of the child support guidelines placed on the Internet after the March meeting and made revisions proposed by Judge Donahue. Committee members made revisions based on that draft.
 - b. Judge Donahue distributed draft language for a special remedy for recovery of lost support when there was a failure to exercise parenting time when a credit was given. Committee members agreed to place this on the website for comment. See Attachment No. 2
 - c. It was moved and seconded to revise the breakdown of duplicated, transferred and controlled or fixed expenses to 50%, 35% and 15% respectively. The motion was passed. Dr. Betson agreed to revise the figures in the table and return it to the Judicial Center. The committee agreed to place a revised draft on the Internet and request interested parties comment on these and other changes.
 - d. Jeffrey Bercovitz distributed comments received since the last meeting.

7. Next meeting dates. The members of the committee agreed to meet again on Friday, July 18, 2003, August 15, 2003, October 17, 2003, all from 10:30 a.m. to 4:00 p.m. at the Indiana Judicial Center; and Thurs.-Fri., Nov. 13-14, 2003 for an all day Judicial Center Seminar on Domestic Relations and hold no Nov. 2003 mtg.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

Suggestions recommended by Domestic Relations Committee and the Judicial Conference of Indiana for judge to consider when preparing a plan to implement HEA 1034 (\$20.00 fee) on ADR program in domestic relations cases

Please report that a majority of judges voted for the mediation/facilitation plan.

What types of cases will be sent to this program?

What eligibility criteria will be used to determine who is accepted in the program?

How do litigants get referred into program? Litigant referral? Attorney referral? Judge/court referral? Combination? Other?

Please summarize how your program will work. In one or two paragraphs briefly outline the process from referral to issuance of order on agreement or, if no agreement is reached, how is the case brought back to the court?

What special procedures will be used for pro se/indigent litigants? How will financial eligibility for each participant be determined?

Based on past legal separation, paternity and dissolution filings, how much funding do you anticipate will be generated for your county through the \$20.00 fee permitted in the HEA 1034 legislation? What is a projected budget for income and expenses? Will you have other funding sources besides the plan funds?

How will the project money be expended? For example, will monies be used to reimburse mediators, to pay personnel to locate and coordinate mediators, to pay for family law mediation training for local persons/attorneys, pay for domestic relations counseling bureau personnel, parent education, use of guardian ad litem, other?

What judicial officer, group of judges and/or judge with others (e.g. local bar, court personnel) will be responsible for the management and day-to-day budget for the project?

Required for December 31 report:

Evaluation component:

How many: cases referred (based on case number), pro se served, total or partially indigent persons served, successfully/unsuccessfully completed?

How much was paid to mediators/facilitators/staff?

How many \$20.00 fees were collected during the past calendar year?

How many "co-pays" were collected during the past calendar year?

Note: Develop model plans to post on website. And/or put checkboxes on this form.

Attachment No. 1

Special Remedy For Recovery of Lost Support. In addition to a modification action for an elimination or reduction of the credit for failure to regularly exercise parenting time, the recipient of child support may seek recovery of the amount of support the parent would have received had the credit not been applied to the support obligation. A petition of restitution of support back to a date prior to the filing of the petition is an intentional exception to the case law prohibition of a retroactive modification of a child support order.

A parent may seek restitution for a period not in excess of six (6) months prior to the filing of the petition. The petition must be based on the failure to regularly exercise parenting time and must demonstrate the failure and the amount of restitution sought. The restitution granted by the court shall be considered as a child support arrearage and a failure to make the ordered payment shall be subject to the court's contempt powers.

Attachment No. 2